

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2543

Introduced by Assembly Member Levine

February 21, 2014

~~An act relating to civil service.~~ *An act to amend Sections 1026 and 1370 of the Penal Code, and to add Section 7233 to the Welfare and Institutions Code, relating to state hospitals.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2543, as amended, Levine. ~~State civil service; nepotism and cronyism; ethics committee.~~ *State hospitals; placement evaluations.*

Existing law establishes the State Department of State Hospitals for the administration of state hospitals and provides for the involuntary confinement of certain individuals in those state hospitals, including defendants who have been found incompetent to stand trial and defendants found to be guilty of a crime, or who have plead not guilty by reason of insanity, and found to be insane at the time he or she committed the crime.

Existing law requires a court, except as specified, to direct that a defendant described above be confined in a state hospital or any other appropriate public or private treatment facility, or placed on outpatient status. Existing law requires the court, prior to making the order directing placement, to order the community program director, as defined, to evaluate the defendant and to submit a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility.

This bill would require the State Department of State Hospitals to establish, within the department, a pool of psychiatrists and psychologists with forensic skills and would require evaluation panels to be created from the pool of psychiatrists and psychologists, as specified. The bill would require the court to order an evaluation panel to evaluate the defendant and to submit a written recommendation relating to the defendant's placement. The bill would make conforming changes.

~~The California Constitution provides that civil service includes every officer and employee of the state, except as specified, and requires that permanent appointment and promotion be made under a general system based upon merit ascertained by competitive examination. The State Civil Service Act governs the employment of persons in state service and provides that all nonexempt appointments shall be filled by the appointing power by appointment, including transfers, reinstatements, promotions, and demotions from employment lists.~~

~~This bill would state the intent of the Legislature to enact legislation that would create an ethics committee to address issues relating to nepotism and cronyism in state service.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1026 of the Penal Code is amended to
2 read:
3 1026. (a) When a defendant pleads not guilty by reason of
4 insanity, and also joins with it another plea or pleas, the defendant
5 shall first be tried as if only ~~such~~ *that* other plea or pleas had been
6 entered, and in that trial the defendant shall be conclusively
7 presumed to have been sane at the time the offense is alleged to
8 have been committed. If the jury ~~shall find~~ *finds* the defendant
9 guilty, or if the defendant pleads only not guilty by reason of
10 insanity, then the question whether the defendant was sane or
11 insane at the time the offense was committed shall be promptly
12 tried, either before the same jury or before a new jury in the
13 discretion of the court. In that trial, the jury shall return a verdict
14 either that the defendant was sane at the time the offense was
15 committed or was insane at the time the offense was committed.
16 If the verdict or finding is that the defendant was sane at the time

1 the offense was committed, the court shall sentence the defendant
 2 as provided by law. If the verdict or finding ~~be is~~ that the defendant
 3 was insane at the time the offense was committed, the court, unless
 4 ~~it shall appear~~ *appears* to the court that the sanity of the defendant
 5 has been recovered fully, shall direct that the defendant be confined
 6 in a state hospital for the care and treatment of the mentally
 7 disordered or any other appropriate public or private treatment
 8 facility approved by ~~the community program director, an~~
 9 *evaluation panel created pursuant to Section 7233 of the Welfare*
 10 *and Institutions Code*, or the court may order the defendant placed
 11 on outpatient status pursuant to Title 15 (commencing with Section
 12 1600) of Part 2.

13 (b) Prior to making the order directing that the defendant be
 14 confined in a state hospital or other treatment facility or placed on
 15 outpatient status, the court shall order ~~the community program~~
 16 ~~director or a designee~~ *evaluation panel* to evaluate the defendant
 17 and to submit to the court within 15 judicial days of the order a
 18 written recommendation as to whether the defendant should be
 19 placed on outpatient status or confined in a state hospital or other
 20 treatment facility. ~~No~~ A person shall *not* be admitted to a state
 21 hospital or other treatment facility or placed on outpatient status
 22 under this section without having been evaluated by ~~the community~~
 23 ~~program director or a designee~~ *evaluation panel*. If, however, it
 24 appears to the court that the sanity of the defendant has been
 25 recovered fully, the defendant shall be remanded to the custody
 26 of the sheriff until the issue of sanity shall have been finally
 27 determined in the manner prescribed by law. A defendant
 28 committed to a state hospital or other treatment facility or placed
 29 on outpatient status pursuant to Title 15 (commencing with Section
 30 1600) of Part 2 shall not be released from confinement, parole, or
 31 outpatient status unless and until the court which committed the
 32 person shall, after notice and hearing, find and determine that the
 33 person's sanity has been restored. ~~Nothing in this~~ *This* section shall
 34 *not* prevent the transfer of the patient from one state hospital to
 35 any other state hospital by proper authority. ~~Nothing in this~~ *This*
 36 section shall *not* prevent the transfer of the patient to a hospital in
 37 another state in the manner provided in Section 4119 of the Welfare
 38 and Institutions Code.

39 (c) If the defendant is committed or transferred to a state hospital
 40 pursuant to this section, the court may, upon receiving the written

1 recommendation of the medical director of the state hospital and
2 the ~~community program director~~ *evaluation panel* that the
3 defendant be transferred to a public or private treatment facility
4 approved by the ~~community program director~~, *evaluation panel*,
5 order the defendant transferred to that facility. If the defendant is
6 committed or transferred to a public or private treatment facility
7 approved by the ~~community program director~~, *evaluation panel*,
8 the court may, upon receiving the written recommendation of the
9 ~~community program director~~, *evaluation panel*, order the defendant
10 transferred to a state hospital or to another public or private
11 treatment facility approved by the ~~community program director~~.
12 ~~Where~~ *evaluation panel*. *When* either the defendant or the
13 prosecuting attorney chooses to contest either kind of order of
14 transfer, a petition may be filed in the court requesting a hearing
15 which shall be held if the court determines that sufficient grounds
16 exist. At that hearing, the prosecuting attorney or the defendant
17 may present evidence bearing on the order of transfer. The court
18 shall use the same procedures and standards of proof as used in
19 conducting probation revocation hearings pursuant to Section
20 1203.2.

21 (d) Prior to making an order for transfer under this section, the
22 court shall notify the defendant, the attorney of record for the
23 defendant, the prosecuting attorney, and the ~~community program~~
24 ~~director or a designee~~ *evaluation panel*.

25 (e) When the court, after considering the placement
26 recommendation of the ~~community program director~~ *evaluation*
27 *panel* required in subdivision (b), orders that the defendant be
28 confined in a state hospital or other public or private treatment
29 facility, the court shall provide copies of the following documents
30 which shall be taken with the defendant to the state hospital or
31 other treatment facility where the defendant is to be confined:

32 (1) The commitment order, including a specification of the
33 charges.

34 (2) A computation or statement setting forth the maximum term
35 of commitment in accordance with Section 1026.5.

36 (3) A computation or statement setting forth the amount of credit
37 for time served, if any, to be deducted from the maximum term of
38 commitment.

39 (4) State summary criminal history information.

1 (5) Any arrest reports prepared by the police department or other
2 law enforcement agency.

3 (6) Any court-ordered psychiatric examination or evaluation
4 reports.

5 (7) The ~~community program director's~~ *evaluation panel's*
6 placement recommendation report.

7 (f) If the defendant is confined in a state hospital or other
8 treatment facility as an inpatient, the medical director of the facility
9 shall, at six-month intervals, submit a report in writing to the court
10 and the ~~community program director of the county of commitment,~~
11 ~~or a designee,~~ *evaluation panel* setting forth the status and progress
12 of the defendant. The court shall transmit copies of these reports
13 to the prosecutor and defense counsel.

14 (g) When directing that the defendant be confined in a state
15 hospital pursuant to subdivision (a), the court shall select the state
16 hospital in accordance with the policies established by the State
17 Department of State Hospitals.

18 (h) For purposes of ~~this section and~~ Sections 1026.1 to 1026.6,
19 inclusive, "community program director" means the person,
20 agency, or entity designated by the State Department of State
21 Hospitals pursuant to Section 1605 of this code and Section 5709.8
22 of the Welfare and Institutions Code.

23 (i) *For purposes of this section, "evaluation panel" means an*
24 *evaluation panel created pursuant to Section 7233 of the Welfare*
25 *and Institutions Code.*

26 SEC. 2. *Section 1370 of the Penal Code is amended to read:*

27 1370. (a) (1) (A) If the defendant is found mentally
28 competent, the criminal process shall resume, the trial on the
29 offense charged shall proceed, and judgment may be pronounced.

30 (B) If the defendant is found mentally incompetent, the trial or
31 judgment shall be suspended until the person becomes mentally
32 competent.

33 (i) In the meantime, the court shall order that the mentally
34 incompetent defendant be delivered by the sheriff to a state hospital
35 for the care and treatment of the mentally disordered, or to any
36 other available public or private treatment facility, including a
37 local county jail treatment facility, approved by the ~~community~~
38 ~~program director~~ *an evaluation panel created pursuant to Section*
39 *7233 of the Welfare and Institutions Code* that will promote the

1 defendant's speedy restoration to mental competence, or *be* placed
2 on outpatient status as specified in Section 1600.

3 (ii) However, if the action against the defendant who has been
4 found mentally incompetent is on a complaint charging a felony
5 offense specified in Section 290, the prosecutor shall determine
6 whether the defendant previously has been found mentally
7 incompetent to stand trial pursuant to this chapter on a charge of
8 a Section 290 offense, or whether the defendant is currently the
9 subject of a pending Section 1368 proceeding arising out of a
10 charge of a Section 290 offense. If either determination is made,
11 the prosecutor shall so notify the court and defendant in writing.
12 After this notification, and opportunity for hearing, the court shall
13 order that the defendant be delivered by the sheriff to a state
14 hospital or other secure treatment facility for the care and treatment
15 of the mentally disordered unless the court makes specific findings
16 on the record that an alternative placement would provide more
17 appropriate treatment for the defendant and would not pose a
18 danger to the health and safety of others.

19 (iii) If the action against the defendant who has been found
20 mentally incompetent is on a complaint charging a felony offense
21 specified in Section 290 and the defendant has been denied bail
22 pursuant to subdivision (b) of Section 12 of Article I of the
23 California Constitution because the court has found, based upon
24 clear and convincing evidence, a substantial likelihood that the
25 person's release would result in great bodily harm to others, the
26 court shall order that the defendant be delivered by the sheriff to
27 a state hospital for the care and treatment of the mentally disordered
28 unless the court makes specific findings on the record that an
29 alternative placement would provide more appropriate treatment
30 for the defendant and would not pose a danger to the health and
31 safety of others.

32 (iv) The clerk of the court shall notify the Department of Justice
33 in writing of any finding of mental incompetence with respect to
34 a defendant who is subject to clause (ii) or (iii) for inclusion in his
35 or her state summary criminal history information.

36 (C) Upon the filing of a certificate of restoration to competence,
37 the court shall order that the defendant be returned to court in
38 accordance with Section 1372. The court shall transmit a copy of
39 its order to the ~~community program director or a designee~~
40 *evaluation panel*.

1 (D) A defendant charged with a violent felony may not be
2 delivered to a state hospital or treatment facility pursuant to this
3 subdivision unless the state hospital or treatment facility has a
4 secured perimeter or a locked and controlled treatment facility,
5 and the judge determines that the public safety will be protected.

6 (E) For purposes of this paragraph, “violent felony” means an
7 offense specified in subdivision (c) of Section 667.5.

8 (F) A defendant charged with a violent felony may be placed
9 on outpatient status, as specified in Section 1600, only if the court
10 finds that the placement will not pose a danger to the health or
11 safety of others. If the court places a defendant charged with a
12 violent felony on outpatient status, as specified in Section 1600,
13 the court must serve copies of the placement order on defense
14 counsel, the sheriff in the county where the defendant will be
15 placed and the district attorney for the county in which the violent
16 felony charges are pending against the defendant.

17 (2) Prior to making the order directing that the defendant be
18 confined in a state hospital or other treatment facility or placed on
19 outpatient status, the court shall proceed as follows:

20 (A) The court shall order the ~~community program director or a~~
21 ~~designee~~ *evaluation panel* to evaluate the defendant and to submit
22 to the court within 15 judicial days of the order a written
23 recommendation as to whether the defendant should be required
24 to undergo outpatient treatment, or committed to a state hospital
25 or to any other treatment facility. ~~No~~ A person shall *not* be admitted
26 to a state hospital or other treatment facility or placed on outpatient
27 status under this section without having been evaluated by the
28 ~~community program director or a designee~~ *evaluation panel*. The
29 ~~community program director or designee~~ *evaluation panel* shall
30 evaluate the appropriate placement for the defendant between a
31 state hospital or a local county jail treatment facility based upon
32 guidelines provided by the State Department of State Hospitals.
33 If a local county jail treatment facility is selected, the State
34 Department of State Hospitals shall provide treatment at the county
35 jail treatment facility and reimburse the county jail treatment
36 facility for the reasonable costs of the bed during the treatment.
37 The six-month limitation in Section 1369.1 shall not apply to
38 individuals deemed incompetent to stand trial who are being treated
39 to restore competency within a county jail treatment facility
40 pursuant to this section.

1 (B) The court shall hear and determine whether the defendant
2 lacks capacity to make decisions regarding the administration of
3 antipsychotic medication, and shall proceed as follows:

4 (i) The court shall hear and determine whether any of the
5 following is true:

6 (I) The defendant lacks capacity to make decisions regarding
7 antipsychotic medication, the defendant's mental disorder requires
8 medical treatment with antipsychotic medication, and, if the
9 defendant's mental disorder is not treated with antipsychotic
10 medication, it is probable that serious harm to the physical or
11 mental health of the patient will result. Probability of serious harm
12 to the physical or mental health of the defendant requires evidence
13 that the defendant is presently suffering adverse effects to his or
14 her physical or mental health, or the defendant has previously
15 suffered these effects as a result of a mental disorder and his or
16 her condition is substantially deteriorating. The fact that a
17 defendant has a diagnosis of a mental disorder does not alone
18 establish probability of serious harm to the physical or mental
19 health of the defendant.

20 (II) The defendant is a danger to others, in that the defendant
21 has inflicted, attempted to inflict, or made a serious threat of
22 inflicting substantial physical harm on another while in custody,
23 or the defendant had inflicted, attempted to inflict, or made a
24 serious threat of inflicting substantial physical harm on another
25 that resulted in his or her being taken into custody, and the
26 defendant presents, as a result of mental disorder or mental defect,
27 a demonstrated danger of inflicting substantial physical harm on
28 others. Demonstrated danger may be based on an assessment of
29 the defendant's present mental condition, including a consideration
30 of past behavior of the defendant within six years prior to the time
31 the defendant last attempted to inflict, inflicted, or threatened to
32 inflict substantial physical harm on another, and other relevant
33 evidence.

34 (III) The people have charged the defendant with a serious crime
35 against the person or property, involuntary administration of
36 antipsychotic medication is substantially likely to render the
37 defendant competent to stand trial, the medication is unlikely to
38 have side effects that interfere with the defendant's ability to
39 understand the nature of the criminal proceedings or to assist
40 counsel in the conduct of a defense in a reasonable manner, less

1 intrusive treatments are unlikely to have substantially the same
2 results, and antipsychotic medication is in the patient's best medical
3 interest in light of his or her medical condition.

4 (ii) If the court finds any of the conditions described in clause
5 (i) to be true, the court shall issue an order authorizing the treatment
6 facility to involuntarily administer antipsychotic medication to the
7 defendant when and as prescribed by the defendant's treating
8 psychiatrist. The court shall not order involuntary administration
9 of psychotropic medication under subclause (III) of clause (i)
10 unless the court has first found that the defendant does not meet
11 the criteria for involuntary administration of psychotropic
12 medication under subclause (I) of clause (i) and does not meet the
13 criteria under subclause (II) of clause (i).

14 (iii) In all cases, the treating hospital, facility, or program may
15 administer medically appropriate antipsychotic medication
16 prescribed by a psychiatrist in an emergency as described in
17 subdivision (m) of Section 5008 of the Welfare and Institutions
18 Code.

19 (iv) If the court has determined that the defendant has the
20 capacity to make decisions regarding antipsychotic medication,
21 and if the defendant, with advice of his or her counsel, consents,
22 the court order of commitment shall include confirmation that
23 antipsychotic medication may be given to the defendant as
24 prescribed by a treating psychiatrist pursuant to the defendant's
25 consent. The commitment order shall also indicate that, if the
26 defendant withdraws consent for antipsychotic medication, after
27 the treating psychiatrist complies with ~~the provisions of~~
28 subparagraph (C), the defendant shall be returned to court for a
29 hearing in accordance with subparagraphs (C) and (D) regarding
30 whether antipsychotic medication shall be administered
31 involuntarily.

32 (v) If the court has determined that the defendant has the
33 capacity to make decisions regarding antipsychotic medication
34 and if the defendant, with advice from his or her counsel, does not
35 consent, the court order for commitment shall indicate that, after
36 the treating psychiatrist complies with ~~the provisions of~~
37 subparagraph (C), the defendant shall be returned to court for a
38 hearing in accordance with subparagraphs (C) and (D) regarding
39 whether antipsychotic medication shall be administered
40 involuntarily.

1 (vi) Any report made pursuant to paragraph (1) of subdivision
2 (b) shall include a description of any antipsychotic medication
3 administered to the defendant and its effects and side effects,
4 including effects on the defendant's appearance or behavior that
5 would affect the defendant's ability to understand the nature of
6 the criminal proceedings or to assist counsel in the conduct of a
7 defense in a reasonable manner. During the time the defendant is
8 confined in a state hospital or other treatment facility or placed on
9 outpatient status, either the defendant or the people may request
10 that the court review any order made pursuant to this subdivision.
11 The defendant, to the same extent enjoyed by other patients in the
12 state hospital or other treatment facility, shall have the right to
13 contact the patients' rights advocate regarding his or her rights
14 under this section.

15 (C) If the defendant consented to antipsychotic medication as
16 described in clause (iv) of subparagraph (B), but subsequently
17 withdraws his or her consent, or, if involuntary antipsychotic
18 medication was not ordered pursuant to clause (v) of subparagraph
19 (B), and the treating psychiatrist determines that antipsychotic
20 medication has become medically necessary and appropriate, the
21 treating psychiatrist shall make efforts to obtain informed consent
22 from the defendant for antipsychotic medication. If informed
23 consent is not obtained from the defendant, and the treating
24 psychiatrist is of the opinion that the defendant lacks capacity to
25 make decisions regarding antipsychotic medication based on the
26 conditions described in subclause (I) or (II) of clause (i) of
27 subparagraph (B), the treating psychiatrist shall certify whether
28 the lack of capacity and any applicable conditions described above
29 exist. That certification shall contain an assessment of the current
30 mental status of the defendant and the opinion of the treating
31 psychiatrist that involuntary antipsychotic medication has become
32 medically necessary and appropriate.

33 (D) (i) If the treating psychiatrist certifies that antipsychotic
34 medication has become medically necessary and appropriate
35 pursuant to subparagraph (C), antipsychotic medication may be
36 administered to the defendant for not more than 21 days, provided,
37 however, that, within 72 hours of the certification, the defendant
38 is provided a medication review hearing before an administrative
39 law judge to be conducted at the facility where the defendant is
40 receiving treatment. The treating psychiatrist shall present the case

1 for the certification for involuntary treatment and the defendant
2 shall be represented by an attorney or a patients' rights advocate.
3 The attorney or patients' rights advocate shall be appointed to meet
4 with the defendant no later than one day prior to the medication
5 review hearing to review the defendant's rights at the medication
6 review hearing, discuss the process, answer questions or concerns
7 regarding involuntary medication or the hearing, assist the
8 defendant in preparing for the hearing and advocating for his or
9 her interests at the hearing, review the panel's final determination
10 following the hearing, advise the defendant of his or her right to
11 judicial review of the panel's decision, and provide the defendant
12 with referral information for legal advice on the subject. The
13 defendant shall also have the following rights with respect to the
14 medication review hearing:

15 (I) To being given timely access to the defendant's records.

16 (II) To be present at the hearing, unless the defendant waives
17 that right.

18 (III) To present evidence at the hearing.

19 (IV) To question persons presenting evidence supporting
20 involuntary medication.

21 (V) To make reasonable requests for attendance of witnesses
22 on the defendant's behalf.

23 (VI) To a hearing conducted in an impartial and informal
24 manner.

25 (ii) If the administrative law judge determines that the defendant
26 either meets the criteria specified in subclause (I) of clause (i) of
27 subparagraph (B), or meets the criteria specified in subclause (II)
28 of clause (i) of subparagraph (B), then antipsychotic medication
29 may continue to be administered to the defendant for the 21-day
30 certification period. Concurrently with the treating psychiatrist's
31 certification, the treating psychiatrist shall file a copy of the
32 certification and a petition with the court for issuance of an order
33 to administer antipsychotic medication beyond the 21-day
34 certification period. For purposes of this subparagraph, the treating
35 psychiatrist shall not be required to pay or deposit any fee for the
36 filing of the petition or other document or paper related to the
37 petition.

38 (iii) If the administrative law judge disagrees with the
39 certification, medication may not be administered involuntarily

1 until the court determines that antipsychotic medication should be
2 administered pursuant to this section.

3 (iv) The court shall provide notice to the prosecuting attorney
4 and to the attorney representing the defendant, and shall hold a
5 hearing, no later than 18 days from the date of the certification, to
6 determine whether antipsychotic medication should be ordered
7 beyond the certification period.

8 (v) If, as a result of the hearing, the court determines that
9 antipsychotic medication should be administered beyond the
10 certification period, the court shall issue an order authorizing the
11 administration of that medication.

12 (vi) The court shall render its decision on the petition and issue
13 its order no later than three calendar days after the hearing and, in
14 any event, no later than the expiration of the 21-day certification
15 period.

16 (3) When the court orders that the defendant be confined in a
17 state hospital or other public or private treatment facility, the court
18 shall provide copies of the following documents which shall be
19 taken with the defendant to the state hospital or other treatment
20 facility where the defendant is to be confined:

21 (A) The commitment order, including a specification of the
22 charges.

23 (B) A computation or statement setting forth the maximum term
24 of commitment in accordance with subdivision (c).

25 (C) A computation or statement setting forth the amount of
26 credit for time served, if any, to be deducted from the maximum
27 term of commitment.

28 (D) State summary criminal history information.

29 (E) Any arrest reports prepared by the police department or
30 other law enforcement agency.

31 (F) Any court-ordered psychiatric examination or evaluation
32 reports.

33 (G) ~~The community program director's~~ *evaluation panel's*
34 placement recommendation report.

35 (H) Records of any finding of mental incompetence pursuant
36 to this chapter arising out of a complaint charging a felony offense
37 specified in Section 290 or any pending Section 1368 proceeding
38 arising out of a charge of a Section 290 offense.

39 (4) When the defendant is committed to a treatment facility
40 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the

1 court makes the findings specified in clause (ii) or (iii) of
2 subparagraph (B) of paragraph (1) to assign the defendant to a
3 treatment facility other than a state hospital or other secure
4 treatment facility, the court shall order that notice be given to the
5 appropriate law enforcement agency or agencies having local
6 jurisdiction at the site of the placement facility of any finding of
7 mental incompetence pursuant to this chapter arising out of a
8 charge of a Section 290 offense.

9 (5) When directing that the defendant be confined in a state
10 hospital pursuant to this subdivision, the court shall select the
11 hospital in accordance with the policies established by the State
12 Department of State Hospitals.

13 (6) (A) (i) If the defendant is committed or transferred to a
14 state hospital pursuant to this section, the court may, upon receiving
15 the written recommendation of the medical director of the state
16 hospital and the ~~community program director~~ *evaluation panel*
17 that the defendant be transferred to a public or private treatment
18 facility approved by the ~~community program director~~, *evaluation*
19 *panel*, order the defendant transferred to that facility. If the
20 defendant is committed or transferred to a public or private
21 treatment facility approved by the ~~community program director~~,
22 *evaluation panel*, the court may, upon receiving the written
23 recommendation of the ~~community program director~~, *evaluation*
24 *panel*, transfer the defendant to a state hospital or to another public
25 or private treatment facility approved by the ~~community program~~
26 ~~director~~ *evaluation panel*. In the event of dismissal of the criminal
27 charges before the defendant recovers competence, the person
28 shall be subject to the applicable provisions of the
29 Lanterman-Petris-Short Act (Part 1 (commencing with Section
30 5000) of Division 5 of the Welfare and Institutions Code). ~~Where~~
31 *If* either the defendant or the prosecutor chooses to contest either
32 kind of order of transfer, a petition may be filed in the court for a
33 hearing, which shall be held if the court determines that sufficient
34 grounds exist. At the hearing, the prosecuting attorney or the
35 defendant may present evidence bearing on the order of transfer.
36 The court shall use the same standards as are used in conducting
37 probation revocation hearings pursuant to Section 1203.2.

38 **Prior**

39 (ii) *Prior* to making an order for transfer under this section, the
40 court shall notify the defendant, the attorney of record for the

1 defendant, the prosecuting attorney, and the ~~community program~~
2 ~~director or a designee~~ *evaluation panel*.

3 (B) If the defendant is initially committed to a state hospital or
4 secure treatment facility pursuant to clause (ii) or (iii) of
5 subparagraph (B) of paragraph (1) and is subsequently transferred
6 to any other facility, copies of the documents specified in paragraph
7 (3) shall be taken with the defendant to each subsequent facility
8 to which the defendant is transferred. The transferring facility shall
9 also notify the appropriate law enforcement agency or agencies
10 having local jurisdiction at the site of the new facility that the
11 defendant is a person subject to clause (ii) or (iii) of subparagraph
12 (B) of paragraph (1).

13 (7) An order by the court authorizing involuntary medication
14 of the defendant shall be valid for no more than one year. The
15 court shall review the order six months after the order was made
16 to determine if the grounds for the authorization remain. In the
17 review, the court shall consider the reports of the treating
18 psychiatrist or psychiatrists and the defendant's patients' rights
19 advocate or attorney. The court may require testimony from the
20 treating psychiatrist or psychiatrists and the patients' rights
21 advocate or attorney, if necessary. The court may continue the
22 order authorizing involuntary medication for up to another six
23 months, or vacate the order, or make any other appropriate order.

24 (b) (1) Within 90 days of a commitment made pursuant to
25 subdivision (a), the medical director of the state hospital or other
26 treatment facility to which the defendant is confined shall make a
27 written report to the court and the ~~community program director~~
28 ~~for the county or region of commitment, or a designee,~~ *evaluation*
29 *panel* concerning the defendant's progress toward recovery of
30 mental competence. ~~Where~~ *When* the defendant is on outpatient
31 status, the outpatient treatment staff shall make a written report to
32 the community program director concerning the defendant's
33 progress toward recovery of mental competence. Within 90 days
34 of placement on outpatient status, the community program director
35 shall report to the court on this matter. If the defendant has not
36 recovered mental competence, but the report discloses a substantial
37 likelihood that the defendant will regain mental competence in the
38 foreseeable future, the defendant shall remain in the state hospital
39 or other treatment facility or on outpatient status. Thereafter, at
40 six-month intervals or until the defendant becomes mentally

1 competent, where the defendant is confined in a treatment facility,
2 the medical director of the hospital or person in charge of the
3 facility shall report in writing to the court and the ~~community~~
4 ~~program director or a designee~~ *evaluation panel* regarding the
5 defendant's progress toward recovery of mental competence.
6 ~~Where~~ *When* the defendant is on outpatient status, after the initial
7 90-day report, the outpatient treatment staff shall report to the
8 community program director on the defendant's progress toward
9 recovery, and the community program director shall report to the
10 court on this matter at six-month intervals. A copy of these reports
11 shall be provided to the prosecutor and defense counsel by the
12 court. If the report indicates that there is no substantial likelihood
13 that the defendant will regain mental competence in the foreseeable
14 future, the committing court shall order the defendant to be returned
15 to the court for proceedings pursuant to paragraph (2) of
16 subdivision (c). The court shall transmit a copy of its order to the
17 ~~community program director or a designee~~ *evaluation panel*.

18 (2) ~~Where~~ *When* the court has issued an order authorizing the
19 treating facility to involuntarily administer antipsychotic
20 medication to the defendant, the reports made at six-month intervals
21 concerning the defendant's progress toward regaining competency
22 shall also consider the issue of involuntary medication. Each report
23 shall include, but is not limited to, all the following:

24 (A) Whether or not the defendant has the capacity to make
25 decisions concerning antipsychotic medication.

26 (B) If the defendant lacks capacity to make decisions concerning
27 antipsychotic medication, whether the defendant risks serious harm
28 to his or her physical or mental health if not treated with
29 antipsychotic medication.

30 (C) Whether or not the defendant presents a danger to others if
31 he or she is not treated with antipsychotic medication.

32 (D) Whether the defendant has a mental illness for which
33 medications are the only effective treatment.

34 (E) Whether there are any side effects from the medication
35 currently being experienced by the defendant that would interfere
36 with the defendant's ability to collaborate with counsel.

37 (F) Whether there are any effective alternatives to medication.

38 (G) How quickly the medication is likely to bring the defendant
39 to competency.

1 (H) Whether the treatment plan includes methods other than
2 medication to restore the defendant to competency.

3 (I) A statement, if applicable, that no medication is likely to
4 restore the defendant to competency.

5 (3) After reviewing the reports, the court shall determine whether
6 or not grounds for the order authorizing involuntary administration
7 of antipsychotic medication still exist and shall do one of the
8 following:

9 (A) If the original grounds for involuntary medication still exist,
10 the order authorizing the treating facility to involuntarily administer
11 antipsychotic medication to the defendant shall remain in effect.

12 (B) If the original grounds for involuntary medication no longer
13 exist, and there is no other basis for involuntary administration of
14 antipsychotic medication, the order for the involuntary
15 administration of antipsychotic medication shall be vacated.

16 (C) If the original grounds for involuntary medication no longer
17 exist, and the report states that there is another basis for involuntary
18 administration of antipsychotic medication, the court shall set a
19 hearing within 21 days to determine whether the order for the
20 involuntary administration of antipsychotic medication shall be
21 vacated or whether a new order for the involuntary administration
22 of antipsychotic medication shall be issued. The hearing shall
23 proceed as set forth in subparagraph (B) of paragraph (2) of
24 subdivision (a).

25 (4) Any defendant who has been committed or has been on
26 outpatient status for 18 months and is still hospitalized or on
27 outpatient status shall be returned to the committing court where
28 a hearing shall be held pursuant to the procedures set forth in
29 Section 1369. The court shall transmit a copy of its order to the
30 community program director or a designee.

31 (5) If it is determined by the court that no treatment for the
32 defendant's mental impairment is being conducted, the defendant
33 shall be returned to the committing court. The court shall transmit
34 a copy of its order to the ~~community program director or a designee~~
35 *evaluation panel*.

36 (6) At each review by the court specified in this subdivision,
37 the court shall determine if the security level of housing and
38 treatment is appropriate and may make an order in accordance
39 with its determination. If the court determines that the defendant
40 shall continue to be treated in the state hospital or on an outpatient

1 basis, the court shall determine issues concerning administration
2 of antipsychotic medication, as set forth in subparagraph (B) of
3 paragraph (2) of subdivision (a).

4 (c) (1) At the end of three years from the date of commitment
5 or a period of commitment equal to the maximum term of
6 imprisonment provided by law for the most serious offense charged
7 in the information, indictment, or misdemeanor complaint,
8 whichever is shorter, a defendant who has not recovered mental
9 competence shall be returned to the committing court. The court
10 shall notify the ~~community program director or a designee~~
11 *evaluation panel* of the return and of any resulting court orders.

12 (2) Whenever any defendant is returned to the court pursuant
13 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
14 subdivision and it appears to the court that the defendant is gravely
15 disabled, as defined in subparagraph (B) of paragraph (1) of
16 subdivision (h) of Section 5008 of the Welfare and Institutions
17 Code, the court shall order the conservatorship investigator of the
18 county of commitment of the defendant to initiate conservatorship
19 proceedings for the defendant pursuant to Chapter 3 (commencing
20 with Section 5350) of Part 1 of Division 5 of the Welfare and
21 Institutions Code. Any hearings required in the conservatorship
22 proceedings shall be held in the superior court in the county that
23 ordered the commitment. The court shall transmit a copy of the
24 order directing initiation of conservatorship proceedings to the
25 ~~community program director or a designee~~, *evaluation panel* the
26 sheriff and the district attorney of the county in which criminal
27 charges are pending, and the defendant's counsel of record. The
28 court shall notify the ~~community program director or a designee~~,
29 *evaluation panel*, the sheriff and district attorney of the county in
30 which criminal charges are pending, and the defendant's counsel
31 of record of the outcome of the conservatorship proceedings.

32 (3) If a change in placement is proposed for a defendant who
33 is committed pursuant to subparagraph (B) of paragraph (1) of
34 subdivision (h) of Section 5008 of the Welfare and Institutions
35 Code, the court shall provide notice and an opportunity to be heard
36 with respect to the proposed placement of the defendant to the
37 sheriff and the district attorney of the county in which criminal
38 charges are pending.

39 (4) ~~Where~~ *If* the defendant is confined in a treatment facility, a
40 copy of any report to the committing court regarding the

1 defendant's progress toward recovery of mental competence shall
2 be provided by the committing court to the prosecutor and to the
3 defense counsel.

4 (d) The criminal action remains subject to dismissal pursuant
5 to Section 1385. If the criminal action is dismissed, the court shall
6 transmit a copy of the order of dismissal to the ~~community program~~
7 ~~director or a designee~~ *evaluation panel*.

8 (e) If the criminal charge against the defendant is dismissed,
9 the defendant shall be released from any commitment ordered
10 under this section, but without prejudice to the initiation of any
11 proceedings that may be appropriate under the
12 Lanterman-Petris-Short Act, Part 1 (commencing with Section
13 5000) of Division 5 of the Welfare and Institutions Code.

14 (f) As used in this chapter, "community program director" means
15 the person, agency, or entity designated by the State Department
16 of State Hospitals pursuant to Section 1605 of this code and Section
17 4360 of the Welfare and Institutions Code.

18 (g) For the purpose of this section, "secure treatment facility"
19 shall not include, except for state mental hospitals, state
20 developmental centers, and correctional treatment facilities, any
21 facility licensed pursuant to Chapter 2 (commencing with Section
22 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
23 3.2 (commencing with Section 1569) of, Division 2 of the Health
24 and Safety Code, or any community board and care facility.

25 (h) *For purposes of this section, "evaluation panel" means an*
26 *evaluation panel created pursuant to Section 7233 of the Welfare*
27 *and Institutions Code.*

28 ~~(h) Nothing in this~~

29 (i) *This section shall not* preclude a defendant from filing a
30 petition for habeas corpus to challenge the continuing validity of
31 an order authorizing a treatment facility or outpatient program to
32 involuntarily administer antipsychotic medication to a person being
33 treated as incompetent to stand trial.

34 ~~(i) This section shall become operative on July 1, 2012.~~

35 SEC. 3. *Section 7233 is added to the Welfare and Institutions*
36 *Code, to read:*

37 7233. (a) *The State Department of State Hospitals shall*
38 *establish a pool of psychiatrists and psychologists with forensic*
39 *skills who are employees of the department from which evaluation*
40 *panels shall be created pursuant to subdivision (b).*

1 ***(b) The department shall create evaluation panels with each***
2 ***panel consisting of three to five, inclusive, forensic psychiatrists***
3 ***or psychologists from the pool created in subdivision (a).***

4 ~~SECTION 1. It is the intent of the Legislature to enact~~
5 ~~legislation that would create an ethics committee to address issues~~
6 ~~relating to nepotism and cronyism in state service.~~